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FROM Central Intelligence Agency	NO. Q356176
Washington, D. C. 20505	DATE 17 Dec 74
TO: Mr. William V. Skidmore	TYPE OF MATERIAL
Office of Management and Budget	ENVELOPE (S)
Washington, D. C. 20503	PACKAGE (S)
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<i>Right Privacy Right</i>	DATE AND TIME OF PICK-UP 17 Dec 74 1600
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OLC 74-2471/a

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

17 DEC 1974

Mr. William V. Skidmore
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Skidmore:

This is in reply to your memorandum of November 26, 1974, requesting our views on a substitute draft bill to S. 1688, "To amend title 5, U.S.C., to protect civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights, to prevent unwarranted governmental invasions of their privacy, and for other purposes," which was prepared by the Committee on the Right of Privacy.

Since the exemption granted the Central Intelligence Agency in section (b) of the bill constitutes a full exemption, no comments are being offered on the merits of the bill, except to confirm our prior comments requesting an exemption from bills in previous Congresses identical to S. 1688. We are grateful that the Committee on the Right of Privacy has recognized our concerns.

We appreciate the opportunity to comment on this proposed legislation.

Sincerely,

SIGNED

George L. Cary
Legislative Counsel

Distribution:

Orig - Addressee
1 - OMB Liaison
1 - Chrono
1 - S. 1688

OLC:PLC:cg (16 Dec 74)

Subject
1688

☐ UNCLASSIFIED

☐ INTERNAL
USE ONLY

☐ CONFIDENTIAL

☐ SECRET

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

OLC
7D35

EXTENSION

NO.

DATE

3 December 1974

STAT

TO: (Officer designation, room number, and building)

DATE

RECEIVED

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OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.
OGC

Would appreciate your comments on the attached draft bill by 11 December.

2.

The draft was prepared by the President's Committee on the Right of Privacy and is an Administration substitute for S. 1688, the Ervin bill protecting the constitutional rights of Government employees. S. 1688 passed the Senate and is before the House Government Operations Committee. The Committee, however, is considering a Committee Print which was scheduled for markup but there was no quorum.

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The exemption for the Agency in section (b), page 7 of the draft bill, should constitute a full exemption. Do you agree? It is similar to our exemption in H.R. 1281, a similar bill, which you previously considered a full exemption. John Martiny, Chief Counsel, House Post Office and Civil Service Committee, assures me the same exemption is in the Committee Print.

Assistant Legislative Counsel

STAT

INTERNAL

UNCLASSIFIED

To amend title 5, United States Code, to protect civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights, to prevent unwarranted governmental invasions of their privacy, and for other purposes.

1

2 Be it enacted by the Senate and House of Representatives of the United
3 States of America in Congress assembled, That (a) chapter 71 of title 5,
4 United States Code, is amended by adding at the end thereof the following new
5 subchapter III:

6 "SUBCHAPTER III - EMPLOYEE RIGHTS

7 "§ 7171. Policy

8 "It is the policy of the United States, as an employer, to assure that those
9 officials of Executive agencies charged with administrative or supervisory
10 responsibility recognize and protect the personal and individual rights,
11 entitlements, and benefits of employees of, and applicants for employment in,
12 Executive agencies.

13 "§ 7172. Definition

14 "For the purpose of this subchapter, 'official of an Executive agency' means -

15 "(1) an officer of an Executive agency;

16 "(2) an 'officer' of any of the 'uniformed services' as such terms
17 are defined under section 101 of title 37; and

18 "(3) an individual acting or purporting to act under the authority of
19 an officer referred to in paragraph (1) or (2) of this section.

20 "§ 7173. Employee rights

21 "(a) An official of an Executive agency may not -

22 "(1) require or request, or attempt to require or request, an employee
23 of an Executive agency or an applicant for employment in an Executive
24 agency to disclose his race, religion, or national origin, or the race,
25 religion, or national origin of any of his forebears. This paragraph

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974-2255

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 26, 1974

LEGISLATIVE REFERRAL MEMORANDUM

To: Legislative Liaison Officer
Department of State
Department of Justice
Department of Health, Education, and Welfare
Commission on Civil Rights
Equal Employment Opportunity Commission
Department of the Interior
Department of the Treasury
Department of Defense
Central Intelligence Agency

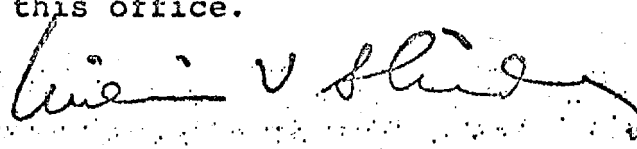
Subject: Committee on the Right of Privacy's draft bill
"To amend title 5, USC, to protect civilian
employees of the executive branch of the...purposes."

The Office of Management and Budget would appreciate receiving the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

(XX) To permit expeditious handling, it is requested that your reply be made within 30 days.

() Special circumstances require priority treatment and accordingly your views are requested by

Questions should be referred to Frank Reeder (395-4814) or to William V. Skidmore (395-4870), the legislative analyst in this office.


William V. Skidmore for
Assistant Director for
Legislative Reference

Enclosures

bc

1 does not prohibit inquiry concerning -

2 "(A) the citizenship of an employee or applicant;

3 "(B) the national origin of an employee or applicant when that
4 inquiry is considered necessary or advisable to determine suit-
5 ability for assignment to activities or undertakings related to
6 the national security of the United States or to law enforcement
7 or to activities or undertakings of any nature outside the United
8 States;

9 "(C) the race, religion, or national origin of an employee or
10 applicant when that matter is in issue in an allegation or complain
11 of discrimination; or

12 "(D) the race, religion, or national origin of an employee or
13 applicant when (i) that matter is directly related to or an integral
14 part of scientific research or program evaluation, (ii) appropriate
15 safeguards have been instituted to preserve both the voluntary
16 participation and the anonymity of the employee or applicant, and
17 (iii) the inquiry has been approved by the Civil Service Commission

18 This paragraph does not prohibit an inquiry made to satisfy the require-
19 ments of law providing preference for Indians in connection with function
20 or services affecting Indians;

21 "(2) coerce, require, or request, or attempt to coerce, require, or
22 request, an employee of an Executive agency to attend or participate in
23 a formal or informal meeting, assemblage, or other group activity held to
24 present, advocate, develop, explain, or otherwise cover in any way, by
25 lecture, discussion, discourse, instruction, visual presentation, or

1 otherwise, any matter or subject other than -

2 "(A) the performance of official duties to which that employee
3 is or may be assigned in the Executive agency; or

4 "(B) the development of skills, knowledge, or abilities that
5 qualify him for the performance of those official duties;

6 "(3) coerce, require, or request, or attempt to coerce, require, or
7 request, an employee of an Executive agency to -

8 "(A) participate in any way in an activity or undertaking unless
9 it is related to the performance of official duties to which the
10 employee is or may be assigned in the Executive agency or related
11 to the development of skills, knowledge, or abilities that qualify
12 him for the performance of those official duties; or

13 "(B) make any report concerning any activity or undertaking of
14 the employee not involving his official duties, except -

15 "(i) when there is reason to believe that the activity or
16 undertaking conflicts with, or adversely affects the
17 performance of, his official duties; or

18 "(ii) as authorized to the contrary under paragraph (6)
19 of this subsection.

20 This paragraph does not prohibit the use of appropriate publicity to
21 inform employees of requests for assistance from public service programs
22 or organizations;

23 "(4) require or request, or attempt to require or request, an employee
24 of an Executive agency or an applicant for employment in an Executive
25 agency to submit to an interrogation or examination or to take a polygraph

1 or psychological test designed to elicit from the employee or applicant
2 information concerning his personal relationship with any individual
3 related to him by blood or marriage, his religious beliefs or practices,
4 or his attitude or conduct with respect to sexual matters. This
5 paragraph does not prohibit -

6 "(A) a physician from eliciting this information or authorizing
7 these tests in the diagnosis or treatment of an employee or
8 applicant in individual cases and not pursuant to general practice
9 or regulation governing the examination of employees or applicants,
10 when the physician considers the information necessary to enable
11 him to determine whether or not the employee or applicant is
12 suffering from mental illness;,,

13 "(B) an official of an Executive agency from advising an employee
14 or applicant of a specific charge of sexual misconduct made against
15 the employee or applicant and giving him a full opportunity to
16 refute the charge; or

17 "(C) an official of an Executive agency from eliciting, from an
18 employee or applicant, in individual cases and not pursuant to
19 general practice or regulation, information concerning the personal
20 relationship of the employee or applicant with any individual
21 related to him by blood or marriage, when that official considers
22 the information necessary in the interest of national security;

23 "(5) coerce or require, or attempt to coerce or require, an employee
24 of an Executive agency to invest his earnings in bonds or other obligati
25 or securities issued by the United States or by an Executive agency, or

1 make donations to any institution or cause of any kind. This paragraph
2 does not prohibit an official of an Executive agency from calling
3 meetings and taking any action appropriate to inform an employee of the
4 opportunity -

5 "(A) voluntarily to invest his earnings in bonds or other
6 obligations or securities issued by the United States or by an
7 Executive agency; or

8 "(B) voluntarily to make donations to any institution or cause;

9 "(6) require or request, or attempt to require or request, an employee
10 of an Executive agency (other than a Presidential appointee) to disclose
11 his property or the property of any member of his family or household.

12 This paragraph does not prohibit -

13 "(A) the Department of the Treasury or any other Executive
14 agency from requiring an employee to make such reports as may be
15 necessary or appropriate for the determination of his liability
16 for taxes, tariffs, customs duties, or similar obligations to the
17 United States; or

18 "(B) an official of an Executive agency from requiring an
19 employee who participates in any manner in, or may affect, any
20 determination with respect to -

21 "(i) a Government contract or grant;

22 "(ii) the regulation or licensing of non-Federal enterprise;

23 "(iii) the tax or other liability of any person to the

24 United States; or
25

1 "(iv) a claim that requires expenditure of money of the
2 United States;

3 from disclosing specific items of the property of that employee,
4 or specific items of the property of any member of his family or
5 household, which may tend to indicate a conflict of interest with
6 respect to the performance of any of the official duties to which
7 the employee is or may be assigned.

8 As used in this paragraph, 'property' includes items of property, income,
9 and other assets, and the source thereof, liabilities, and personal and
10 domestic expenditures;

11 "(7) prohibit or restrict, or attempt to prohibit or restrict, the
12 exercise by an employee of an Executive agency of the right of reasonable
13 communication with any official of his agency; or

14 "(8) remove, suspend or furlough from duty without pay, demote, reduce
15 in rank, seniority, status, pay, or performance or efficiency rating,
16 deny promotion to, relocate, reassign, discipline, or discriminate in
17 regard to any employment right, entitlement, or benefit or any term or
18 condition of employment of, an employee of an Executive agency, or
19 threaten to commit any of those acts, by reason of -

20 "(A) the refusal or failure of the employee to submit to or
21 comply with any requirement, request, or action prohibited by this
22 subsection; or

23 "(B) the exercise by the employee of any right, entitlement,
24 benefit, or other protection granted or secured by this section.

1 "(b) The provisions of subsection (a) of this section do not apply to -

2 "(1) the Central Intelligence Agency;

3 "(2) the National Security Agency;

4 "(3) the Federal Bureau of Investigation; or

5 "(4) any other Executive agency, or part thereof, as the President,

6 in the interest of national security, may designate.

7 "(c) An employee of, or an applicant for employment in, an Executive agency

8 who claims to be aggrieved by a violation or threatened violation of subsection

9 (a) of this section is entitled to file a grievance with the agency concerned

10 not later than 15 days after the date of the violation or threatened violation."

11 (b) The analysis of chapter 71 of title 5, United States Code, is amended by

12 adding the following at the end thereof:

13 "SUBCHAPTER III - EMPLOYEE RIGHTS

14 "Sec.

15 "7171. Policy.

16 "7172. Definition.

17 "7173. Employee rights."

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Analysis of differences between draft bill and S. 1688

The primary purpose of the draft substitute bill for S. 1688 is to soften the effect of the provisions of S. 1688 on Government operations by including appropriate exceptions to most of the prohibitions therein and by eliminating the provisions which would be most difficult to administer and most disruptive of Government operations. The substitute bill has been drafted in the form of amendments to title 5, United States Code, which contains most personnel statutes relating to Government employees. The draft bill adds a subchapter III, "Employee Rights," composed of sections 7171, 7172, and 7173, to chapter 71 of title 5.

Section 7171, Policy, reaffirms the intent of S. 1688 to protect constitutional rights of Government employees and prevent unwarranted governmental invasions of their privacy by stating that the policy of the United States, as an employer, is to assure that those officials of Executive agencies charged with administrative or supervisory responsibility recognize and protect the personal and individual rights, entitlements, and benefits of employees of and applicants for employment in Executive agencies.

The proposed section 7172 in the draft bill contains definitions extending coverage to officers of Executive agencies and uniformed services and those purporting to act under the authority of the officer.

The proposed section 7173(a) contains eight paragraphs comparable in content to most of the subsections of section 1 of S. 1688. Paragraph (1), comparable to section 1(a) of S. 1688, prohibits inquiries of employees or applicants about race, religion, or national origin, but adds to the

exceptions inquiries related to discrimination complaints, scientific research program evaluation, and Indian preference.

The proposed paragraphs (2) and (3) in the draft bill, comparable to section 1(b), (c), and (d) of S. 1688, prohibit required or requested attendance at meetings or activities not related to official duties or making a report of such absence or nonparticipation. The draft bill makes exceptions for conflict-of-interest situations, where the activity adversely affects the performance of official duties, and requests for assistance from public service programs or organizations.

The proposed paragraph (4), comparable to section 1(e) and 1(f) of S. 1688, prohibits inquiries, including the use of the polygraph, concerning an employee's personal relationship with any individual related to him by blood or marriage, his religious beliefs or practices or his attitude or conduct with respect to sexual matters." The draft bill adds to the exceptions in the bill an additional exception for national security matters.

The draft bill does not contain a provision comparable to section 1(g) of S. 1688 because the political activities provisions of existing law are comparable to this provision.

The proposed paragraph (5), comparable to section 1(h) of S. 1688, prohibits forced participation in bond drives or other campaigns of any institution. Both provisions allow meetings to afford employees the opportunity to make voluntary contributions.

The proposed paragraph (6), comparable to section 1(i) and (j) of S. 1688, prohibits inquiries about the property of an employee or his family. The draft bill adds to the exceptions ones for participants in Government contracts or grants and the regulation or licensing of non-Federal enterprises.

The proposed paragraph (7), reaffirming the right of an employee to reasonable communication with any official of his agency is a replacement for section 1(k), which prohibits any interrogation of an employee under investigation for misconduct without the presence of the employee's counsel or other person of his choice. (If this latter provision were enacted and broadly construed it could cause massive disruption of the day-to-day operations of the Government.)

The proposed paragraph (8) in the draft bill, comparable to section 1(l) of S. 1688, prohibits retaliatory action against an employee for refusing to comply with requirements or requests prohibited by the section.

The proposed section 7173(b) in the draft bill excludes from its coverage the CIA, NSA, FBI, and any other agency designated by the President for national security reasons.

Sections 6, 7, and 8 of S. 1688 exempt the CIA and NSA from some of the bill's provisions while section 9 exempts the FBI from all of the bill's provisions.

The proposed section 7173(c) in the draft bill authorizes employees to file grievances with their agencies for violations of the provisions of the bill. This is a substitute for the provisions of sections 4 and 5 of S. 1688 providing for judicial review and review by a Board of Employee Rights, as well as a grievance procedure under section 10 of S. 1688. Sections 2 and 3 of S. 1688 have been made unnecessary by the broader language of the substitute draft bill.